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ABSTRACT

Introductory comments for a seminar on the Bakke decision and implications for the issue of equity of access are presented. It is suggested that before the Bakke case public support for affirmative action admissions programs was diminishing; and that if affirmative action had continued as it was being operated, its negative effects may have been its downfall. The U.S. Supreme Court neither declared the concept of affirmative action discriminatory nor found the special admissions program at the University of California (Davis) constitutional. Some foresee the Bakke decision as bringing about an era of even greater affirmative action/equal opportunity growth for all segments of society, not just racial minorities. The role of the school admissions officers and administrators in determining the impact of the Bakke decision will be crucial. It is important to develop a design through which the affirmative action commitment can be fulfilled without violating the court's guidelines so that further federal intervention can be avoided. (SW)

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Paper Presented at a Seminar for State Leaders in Postsecondary Education

WELCOME SPEECH "BAKKE AND BEYOND" SEMINAR

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San Diego, California
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SHEEO

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WELCOME SPEECH
"BAKKE AND BEYOND" SEMINAR
SEPTEMBER 13, 1978
PRESENTED BY STATE SEN. PATRICIA SAIKI
CHAIRMAN, WESTERN INTERSTATE COMMISSION FOR HIGHER EDUCATION

WELCOME TO EACH OF YOU ON BEHALF OF THE ASPEN INSTITUTE FOR HUMANISTIC STUDIES, THE CALIFORNIA POSTSECONDARY EDUCATION COMMISSION, THE EDUCATION COMMISSION OF THE STATES, AND THE WESTERN INTERSTATE COMMISSION FOR HIGHER EDUCATION. THIS SEMINAR, THE FIRST OF SIX TO BE HELD THROUGHOUT THE COUNTRY THIS FALL, HAS BEEN MADE POSSIBLE THROUGH A FORD FOUNDATION GRANT. A SPECIAL THANKS TO YOU, PAT CALLAN, AND TO THE CALIFORNIA POSTSECONDARY EDUCATION COMMISSION FOR INVITING ALL OF US FROM THROUGHOUT THE WEST TO CONVENE IN THE STATE WHICH EXPERIENCED THE BAKKE CASE FIRST HAND.

YOU KNOW IT IS VERY UNUSUAL FOR NATIONAL, REGIONAL, AND STATE COMMISSIONS TO JOIN HANDS WITH A NATIONAL INSTITUTE TO CO-SPONSOR A SEMINAR FOR DECISION MAKERS FROM THROUGHOUT THE WESTERN UNITED STATES. THAT'S QUITE A TEAM EFFORT. SUCH TEAMWORK OCCURS ONLY FOR HIGHLY SIGNIFICANT TOPICS. THE SUPREME COURT'S RULING IN THE BAKKE CASE IS SUCH A TOPIC. IT IS SIGNIFICANT BECAUSE IT COULD ULTIMATELY TOUCH EVERY PERSON ASPIRING TO ENTER A COLLEGE, UNIVERSITY, OR PROFESSIONAL SCHOOL. IT IS CRUCIAL THAT WE WHO HELP SHAPE EDUCATION TODAY UNDERSTAND THIS DECISION AND ITS IMPLICATIONS AS WE CREATIVELY STRUGGLE WITH THE ISSUE OF EQUITY IN ACCESS.

I THINK WE ARE FORTUNATE AS WE FACE THE MANY QUESTIONS ARISING OUT OF THE BAKKE DECISION, THAT WE HAVE THE WEIGHT OF THE PEOPLE OF THE UNITED STATES AND THEIR GOVERNMENT ON THE SIDE OF HELPING MINORITY GROUPS. CONTRARY TO WHAT SOME MAY BELIEVE THE POLICY OF AIDING MINORITIES IS NOT SOME WHIM OF LEGISLATORS, BUREACRATS OR THE COURTS. RATHER IT IS A COMMITMENT OF THE PEOPLE OF THE UNITED STATES THROUGH THEIR GOVERNMENT.

MANY HIGHER EDUCATION ADMINISTRATORS CONSIDER THE BAKKE DECISION TO BE A COLOSSAL ENIGMA. BUT WHAT WOULD HAVE HAPPENED HAD THERE BEEN NO COURT DECISION ON THIS ISSUE? PUBLIC CONFIDENCE IN AFFIRMATIVE ACTION, THAT EFFORT BORN IN THE '60s TO PROVIDE GREATER ACCESS IN EDUCATION TO MINORITIES, HAD ALREADY BEGUN TO ERODE. AFFIRMATIVE ACTION PROGRAMS WERE BEING RIDICULED IN SOME CIRCLES. APPLICANTS TO SOME COLLEGES AND PROFESSIONAL SCHOOLS FELT THEY HAD BETTER CHANCES FOR ACCEPTANCE IF THEY WERE FEMALE AND HAD SPANISH SURNAMES. AND MANY WHITE AMERICANS, PARTICULARLY MEN, SAID THAT AFFIRMATIVE ACTION, CONCEIVED TO COMBAT DISCRIMINATION, HAD EVOLVED INTO A CREATURE THAT DISCRIMINATED AGAINST THEM.

ALSO, AFFIRMATIVE ACTION UNWITTINGLY STEREOTYPED ETHNIC MINORITIES AS "LESS QUALIFIED" THAN OTHER STUDENTS, WHICH JUST ISN'T TRUE. YET BECAUSE MINORITIES WERE ENROLLED ACCORDING TO DIFFERENT STANDARDS, THEY WERE PIGEONHOLED AS "INFERIOR". AFFIRMATIVE ACTION PROGRAMS HAD NOT BEEN ABLE TO AVOID THIS, AND

IF PREFERENTIAL ADMISSIONS PROGRAMS HAD CONTINUED TO STIGMATIZE THOSE OF PARTICULAR RACES OR COLORS AS BEING LESS QUALIFIED, THEN PHYSICIANS, LAWYERS, AND OTHER PROFESSIONALS WHO ARE MINORITIES COULD BE LESS RESPECTED OR TRUSTED.

SO, ALTHOUGH MINORITIES WERE ENJOYING GREATER EDUCATIONAL OPPORTUNITIES THAN EVER BEFORE BECAUSE OF AFFIRMATIVE ACTION, PUBLIC SUPPORT OF THE PROGRAM WAS DIMINISHING. IF AFFIRMATIVE ACTION CONTINUED TO OPERATE AS IT HAD, THE PUBLIC MAY HAVE REACTED TO ITS NEGATIVE EFFECTS BY DEALING IT A QUICK, BRUTAL, EMBARRASSING DEATH.

IN THIS CLIMATE THE SUPREME COURT HANDED DOWN THE BAKKE DECISION. THE JUDGES COULD HAVE DECLARED THE CONCEPT OF AFFIRMATIVE ACTION DISCRIMINATORY. THAT WOULD HAVE MADE IT MORE DIFFICULT THAN IT WAS A DECADE AGO TO PROVIDE EQUAL EDUCATIONAL OPPORTUNITIES, BECAUSE THE CONCEPT OF AFFIRMATIVE ACTION WOULD HAVE BEEN SO TARNISHED THAT THE PUBLIC MAY HAVE BEEN UNWILLING TO TRY AGAIN TO EQUALIZE EDUCATIONAL OPPORTUNITY AMONG ALL PEOPLE. THE BAKKE DECISION KEPT US FROM SUCH A RETREAT.

OR THE SUPREME COURT COULD HAVE DECLARED THE SPECIAL ADMISSIONS PROGRAM OF THE UNIVERSITY OF CALIFORNIA AT DAVIS CONSTITUTIONAL AND DISMISSED ALLAN BAKKE'S ATTEMPT TO BECOME A PHYSICIAN. THIS WOULD HAVE LIT A FUSE AMONG AMERICANS WHO BELIEVE THAT ALLAN BAKKE WAS INDEED THE OBJECT OF DISCRIMINATION.

INSTEAD, THE COURT UPHELD THE CONCEPT OF AFFIRMATIVE ACTION, BUT DECLARED THAT THE SETTING OF QUOTAS IN ADMISSIONS PROGRAMS DOES NOT DETERMINE EQUAL OPPORTUNITY. RACIAL QUOTAS ALONE CANNOT BE USED TO DETERMINE ADMISSIONS, THE COURT STATED. BUT RACE CAN BE ONE OF A VARIETY OF FACTORS CONSIDERED. THE COURT LAUDED DIVERSITY IN A STUDENT BODY AND APPROVED THE USE OF ETHNIC DIVERSITY AS ONE FACTOR.

WHERE DOES THAT LEAVE US TODAY? U.S. NEWS & WORLD REPORT ESTIMATES THAT 150 UNDERGRADUATE, GRADUATE, AND PROFESSIONAL SCHOOL ADMISSIONS PROGRAMS PROVIDE A FIXED NUMBER OF SLOTS FOR MEMBERS OF RACIAL MINORITY GROUPS. SUCH PROGRAMS MUST NOW BE ABOLISHED. AND ON HUNDREDS OF OTHER U.S. CAMPUSES, OFFICIALS MUST REVIEW THEIR POLICIES TO SEE WHETHER INFORMAL "SET-ASIDE" POLICIES, ADMISSIONS GOALS, AND "TWO-TRACK" SYSTEMS MEASURE UP TO THE COURT'S GUIDELINES.

SOME PEOPLE PREDICT THAT SCHOOLS WILL BE OVERLY CAUTIOUS IN ADMITTING MINORITIES UNTIL THEY ARE CONFIDENT THAT THEIR ADMISSIONS POLICIES ARE WITHIN THE GUIDELINES OF THE BAKKE CASE. "BETTER TO BE CAUTIOUS THAN TO FIGHT IN COURT," THEY SAY. THIS COULD HAVE A REVERSE AFFIRMATIVE ACTION EFFECT, KEEPING QUALIFIED MINORITIES OUT OF SCHOOL. WE CANNOT ALLOW THIS TO HAPPEN. OTHER EDUCATORS PREDICT THAT BAKKE COULD BE THE BEGINNING OF THE END OF AFFIRMATIVE ACTION, SINCE THE COURT GAVE ADMINISTRATORS ONLY VAGUE GUIDELINE TO FOLLOW.

STILL OTHERS FORESEE THE BAKKE DECISION HERALDING AN ERA OF EVEN GREATER AFFIRMATIVE ACTION/EQUAL OPPORTUNITY GROWTH FOR ALL SEGMENTS OF SOCIETY, NOT JUST FOR RACIAL MINORITIES. THIS IS POSSIBLE, AND THIS IS WHAT I BELIEVE. AND THIS IS WHERE YOU, THE HIGHER EDUCATION DECISION MAKERS IN YOUR STATES, CAN BREAK NEW GROUND.

NORMAN DORSEN, BOARD CHAIRMAN OF THE AMERICAN CIVIL LIBERTIES UNION, HAS ASTUTELY PREDICTED, "...IT IS THE SCHOOL ADMISSIONS OFFICERS AND THE ADMINISTRATORS WHO WILL BE CRUCIAL IN DETERMINING WHAT THE IMPACT OF THE BAKKE DECISION IS." HE COULDN'T BE MORE CORRECT.

IF WE ARE TO AVOID FURTHER FEDERAL INTERVENTION AND PRESERVE THE MANAGEMENT OF HIGHER EDUCATION AT THE LOCAL AND STATE LEVELS WHERE I FEEL IT TRULY BELONGS, THEN IT WILL BE LEFT TO US TO DETERMINE A DESIGN THROUGH WHICH WE CAN FULFILL OUR COMMITMENT TO AFFIRMATIVE ACTION WITHOUT VIOLATING THE GUIDELINES ESTABLISHED BY THE COURT.

AT THIS SEMINAR TODAY WE ARE NOT TALKING ABOUT MERELY GUARDING THE LIFE OF ADMISSIONS PROGRAMS. WE ARE TALKING ABOUT GUARDING EDUCATIONAL OPPORTUNITIES FOR PEOPLE. THAT IS WHY WE ARE HERE. THAT IS OUR CHALLENGE. THAT IS OUR RESPONSIBILITY. IT'S A TOUGH CHALLENGE AND IT WILL DEMAND MUCH IN STUDY, KNOWLEDGE, WISDOM, FLEXIBILITY AND COMPASSION FOR ALL SIDES INVOLVED.

MAY WE BE PRODUCTIVE, AND MAY OUR ACTIONS TOMORROW MEET THE NEEDS OF ALL SEGMENTS OF SOCIETY.